

**RIGHT TO KNOW ADVISORY COMMITTEE
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

DRAFT AGENDA

November 17, 2011

9:00 a.m.

Room 438, State House, Augusta

Convene

- Welcome and Introductions
- Existing public records exceptions awaiting recommendations
 1. (15) 22 MRSA §1555-D - lists of tobacco sellers + letter (review)
 2. (18) 22 MRSA §1696-D - Community Right-to-know (AG and DHHS)
 3. (19) 22 MRSA §1696-F - Community Right-to-know (AG and DHHS)
 4. (37) 22 MRSA §3034 - Missing persons (CME and AG)
 5. (57) 23 MRSA §63 - right-of-way divisions' records (MTA and MaineDOT)
 6. (62) 23 MRSA §8115 - Northern New England Passenger Rail Authority (NNEPRA)
 7. (66) 24 MRSA §2510 (and §2505) professional competence reports (Medical licensing boards, other interested parties)
 8. (67) 24 MRSA §2510-A professional competence review records (Medical licensing boards, other interested parties)
 9. (54) 22 MRSA §8754 - sentinel events (AG, DHHS, other interested parties)
- Other?
- Scheduling future subcommittee meetings, if necessary

Adjourn

Scheduled meetings:

Thursday, November 17, 2011, 1:00 p.m., Right to Know Advisory Committee

Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12 and Sept. 29 Subcommittee meetings

Revised 11/15/2011 9:12 AM

* = 11/17 Subcomtee agenda

O = approved by Subcomtee

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
15	22	1555-D	1	Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers	DHHS OAG	<ul style="list-style-type: none"> No requests RECOMMEND: Repeal subsection 	11/4/10: tabled 9/12/11: AMEND - wait for AG draft 9/29/11: AMEND and letter to HHS	
18	22	1696-D		Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	DHHS	<ul style="list-style-type: none"> No record of any experience No changes 	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information	
19	22	1696-F		Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	DHHS	<ul style="list-style-type: none"> No record of any experience No changes 	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information	

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20	22	1711-C	2	Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual	DHHS	<ul style="list-style-type: none"> Not a public records exception: info in hands of private entities, allows disclosure to Licensing 	11/4/10: tabled 9/12/11: no change	
21	22	1828		Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	DHHS	<ul style="list-style-type: none"> Request generally not denied by identifying information is redacted No changes Surveys must be reviewed by federal CMS before can be released 	11/4/10: tabled 9/12/11: tabled for more info (AG) 9/29/11: no change	

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22	1848	1	Title 22, 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act	OAG	<ul style="list-style-type: none"> Confidential under 10 §1107 and 16 §614 No requests in recent years No change DHHS, Div of Licensing and Regulatory Services; Maine Hospital Association 	11/4/10: tabled 9/12/11: no change 5-1 (SB)	
33	2706	4	Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have "direct and legitimate interest" or meet other criteria Amended in 2011, PL 2011, c. 58	DHHS	<ul style="list-style-type: none"> Denial of access occurs daily pursuant to statute No changes 	11/4/10: tabled 9/12/11: no change	
34	2706-A	6	Title 22, section 2706-A, subsection 6, relating to adoption contact files	DHHS	<ul style="list-style-type: none"> No FOA requests; only requests from adoptees and families Medical info protected by HIPAA No changes 	11/4/10: tabled 9/12/11: no change	

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35	22	2769	4	Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form	DHHS	<ul style="list-style-type: none"> • No FOA requests; only requests from adoptees and families • Medical info protected by HIPAA • No changes 	11/4/10: tabled 9/12/11: no change	
36	22	3022	8, 12, 13	Title 22, section 3022, subsections 8, 12 and 13, relating to medical examiner information	OAG	<ul style="list-style-type: none"> • Police reports and medical records: 3-5 requests per year • Suicide notes: requests extremely rare • Other materials: available to attorneys in court proceedings • Communications : almost never requested • No changes 	11/4/10: tabled 9/12/11: no change	

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37	22	3034	2	Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files	OAG	<ul style="list-style-type: none"> No requests RECOMMEND: give CME discretion to make identifying info public 	11/4/10: tabled 9/12/11: AMEND 9/29/11: wait for review of language	
38	22	3188	4	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	DHHS	<ul style="list-style-type: none"> Never implement RECOMMEND repeal section 	11/4/10: tabled 9/12/11: letter to HHS about repeal	
39	22	3192	13	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	DHHS	<ul style="list-style-type: none"> Never implement RECOMMEND repeal section 	11/4/10: tabled 9/12/11: letter to HHS about repeal	
44	22	4008	1	Title 22, section 4008, subsection 1, relating to child protective records	DHHS	<ul style="list-style-type: none"> Rarely applied in FOA requests; apply when parties in litigation that does not involve the department request child protective records No changes (must comply with federal law) 	11/4/10: tabled 9/12/11: no change	

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53	22	8707		Title 22, section 8707, relating to the Maine Health Data Organization	MHDO	<ul style="list-style-type: none"> Data release rules Only two requests, one concerned paying for the data No changes 	10/18: Table - sub-§2 no change; sub-§4 why MHCFC link? 9/12/11: tabled 9/29/11: AMEND	
54	22	8754		Title 22, section 8754, relating to medical sentinel events and reporting	MHDO DHHS	<ul style="list-style-type: none"> No requests known Amend: "incidents reports and similar documents" 	11/4/10: tabled 9/12/11: tabled - more info and amendment language (AG) 9/29/11: Tabled	
55	22	8824	2	Title 22, section 8824, subsection 2, relating to the newborn hearing program	DHHS	<ul style="list-style-type: none"> No requests for personally identifiable info Protected by HIPAA No changes Involve Advisory Committee if changes 	11/4/10: tabled 9/12/11: no change	

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56	22	8943	Title 22, section 8943, relating to the registry for birth defects	DHHS	<ul style="list-style-type: none"> No requests for personally identifiable info Protected by HIPAA No changes Involve Advisory Committee if changes 	11/4/10: tabled 9/12/11: no change	
57	23	63	Title 23, section 63, relating to records of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority	MTA & DOT	<ul style="list-style-type: none"> Covers two categories of records Invoked rarely Subject of two Law Court cases, one LD (not enacted) No changes 	11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: AMEND - review draft	
59	23	1980	Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike Amended by PL 2011, c. 302, §18	MTA	<ul style="list-style-type: none"> Violation Enforcement System; records license plates only See 23 §1982 No changes 	11/4/10: tabled 9/12/11: no change	

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60	23	1982		Title 23, section 1982, relating to patrons of the Maine Turnpike	MTA	<ul style="list-style-type: none"> • Toll violation system, as well as any other records • Comes into play several times a year; never used in litigation in which MTA is a party • No changes 	11/4/10: tabled 9/12/11: no change	
61	23	4251	10	Title 23, section 4251, subsection 10, relating to records in connection with public-private transportation project proposals of at least \$25,000,000 or imposing new tolls	DOT	<ul style="list-style-type: none"> • Law became effective July 12, 2010 • No experience • No changes 	11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: no change	

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62	23	8115	Title 23, section 8115, relating to the Northern New England Passenger Rail Authority	NNEPRA	<ul style="list-style-type: none"> Has not received any requests Four types of records <ul style="list-style-type: none"> Trade secrets Records and correspondence relating to negotiations Estimates of cost on projects put out to bid Employment applications No changes 	11/4/10: tabled 9/12/11: tabled - redraft for consistent language and policy; need review by NNEPRA 9/29/11: Tabled, need comments on draft	

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66	24	2510	1	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: <ul style="list-style-type: none"> cited 2-3 times per year PROPOSED: clarify confidentiality applies to all patient complaints MeHospAssn: <ul style="list-style-type: none"> MHA does not administer Not aware of requests No changes BdofDentalEx: <ul style="list-style-type: none"> No requests n/a MeMedAssn: <ul style="list-style-type: none"> MMA does not administer Don't know how frequent No changes 	9/27: table - ask medical licensing boards for input; <i>Consumers for Affordable Health Care input requested</i> 11/4/10: Tabled until 2011 9/12/11: tabled for Consumers for Affordable Health Care comments 9/29/11: AMEND (with §2505); needs review	

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67	24	2510-A		Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: ‣ Cited 2-3 times per year ‣ PROPOSED: allow Bd to access peer review reports MeHospAssn: ‣ Not aware of requests ‣ No changes BdofDentalEx: ‣ No requests ‣ n/a MeMedAssn: ‣ substantial experience ‣ not held by public entities so not subject to FOA ‣ no changes	9/27: table - ask medical licensing boards for input 11/4/10: tabled until 2011 9/12/11: tabled - invite Med Licensing Board 9/29/11: tabled; work with MeMedAssn and MeHospAssn on BdLicMed changes	

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68	24	2604		Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: <ul style="list-style-type: none"> 100-200 times per year No recommendation (other states allow to be released) BdofDentalEx: <ul style="list-style-type: none"> No requests n/a MedicalMutual: <ul style="list-style-type: none"> Zero requests No changes MeMedAssn: <ul style="list-style-type: none"> MMA does not administer No changes 	9/27: table - ask medical licensing boards for input 11/4/10: tabled until 2011 9/12/11: tabled - invite Med Lic Bd 9/29/11: no change	

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69	24	2853	1-A Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.)	BOI has no role with the Superior Court <ul style="list-style-type: none"> Records filed with the Superior Court Cited 100-200 times per year, but doesn't usually receive court documents No changes MeHospAssn: Not aware if requests are made to courts No changes BdofDentalEx: No requests MedicalMutual: No direct role in administration No changes MeMedAssn: MMA does not administer No changes 	9/27: table - ask medical licensing boards, Maine Trial Lawyers for input 11/4/10: tabled until 2011 9/12/11: no change 9/29/11: no change	

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70 24	2857	1, 2	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.)	BOI has no role <ul style="list-style-type: none"> Records of Screening Panels (Judicial Branch) BdLicMed: <ul style="list-style-type: none"> Not cited or applied; Bd doesn't receive panel information No recommendation MeHospAssn: <ul style="list-style-type: none"> Only partially administer Not aware about requests No changes BdofDentalEx: <ul style="list-style-type: none"> No requests n/a MedicalMutual: <ul style="list-style-type: none"> No direct role in administration No changes MeMedAssn: <ul style="list-style-type: none"> MMA does not administer No changes 	9/27: table - ask medical licensing boards, Courts, Maine Trial Lawyers for input 11/4/10: tabled until 2011 9/12/11: no change	

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112	24-A	6807	7	Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of violators	BOI	<ul style="list-style-type: none"> To date, the Bureau has not conducted any examinations of life settlement companies. The exception has not been cited as a basis of denial of a FOA request No changes 	10/18: Table - ask TRecord, (subpoena) 11/4/10: divided report - no change 3-1 (SBellows) - but flag that inconsistent with treatment of examination reports 9/12/11: no action 9/29/11: letter to IFS	

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73	24-A	216	2, 5	Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance	BOI	<ul style="list-style-type: none"> Records associated with actual or claimed violations of Insurance Code 2-4 requests per month Subpoena, hearing on motion to quash No changes MTLA: no changes 	9/27: table - ask Maine Trial Lawyers for input 9/12/11: tabled - for MTLA input 9/29/11: no change	
94	24-A	2393	2	Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges	BOI	<ul style="list-style-type: none"> No FOA requests No changes 	10/18: Table - obsolete? Rewrite to ensure confidentiality of old records? 9/29/11: AMEND to address when program no longer exists	

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception #15

Sec. 1. 22 MRSA § 1555-D, sub-§ 1 is repealed:

§1555-D. Illegal delivery of tobacco products

A person may not knowingly transport or cause to be delivered to a person in this State a tobacco product purchased from a person who is not licensed as a tobacco retailer in this State, except that this provision does not apply to the transportation or delivery of tobacco products to a licensed tobacco distributor or tobacco retailer.

~~1. **Lists.** The Attorney General shall maintain lists of licensed tobacco retailers and known unlicensed tobacco retailers. The Attorney General shall provide to a delivery service lists of licensed tobacco retailers and known unlicensed tobacco retailers. The list of known unlicensed tobacco retailers is confidential. A delivery service that receives a list of known unlicensed tobacco retailers shall maintain the confidentiality of the list.~~

2. Penalty. The following penalties apply for violation of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$50 nor more than \$1500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended.

B. An employer of a person who, while working and within the scope of that person's employment, violates this section commits a civil violation for which a fine of not less than \$50 nor more than \$1,500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended.

3. Enforcement. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

4. Affirmative defense. It is an affirmative defense to a prosecution under this section that a person who transported tobacco products or caused tobacco products to be delivered reasonably relied on licensing information provided by the Attorney General under this section.

5. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

6. Forfeiture. Any tobacco product sold or attempted to be sold in a delivery sale that does not meet the requirements of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

Summary

Public Records Exceptions Subcommittee

Proposed draft language changes

This amendment repeals the provision that designates as confidential lists maintained by the Attorney General's Office of known unlicensed tobacco retailers. The Attorney General no longer maintains such lists as a result of a Supreme Court decision that State law is preempted by federal law.

Public Records Exceptions Subcommittee
Proposed letter to HHS Committee

Exception # 15

Sen. Earle L. McCormick
Rep. Meredith N. Strang Burgess
Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, Maine 04333

Dear. Sen. McCormick and Rep. Strang Burgess:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is reviewing existing public records exceptions in the statutes, and is focusing on the exceptions found in Titles 22 through 25. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for either keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered an exception in Title 22, section 1555-D, subsection 1 relating to lists maintained by the Attorney General's Office of known unlicensed tobacco retailers. Upon reviewing the exception at the request of the Subcommittee, the Attorney General's Office recommended that the confidentiality provision be repealed as the lists required by the statute are no longer collected or maintained as a result of a U.S. Supreme Court decision ruling the Maine's law is preempted under federal law. In light of the Supreme Court ruling, the entire statute, section 1555-D, prohibiting the illegal delivery of tobacco products is not enforceable. In addition to the confidentiality provision in subsection 1, the Attorney General's Office also recommended that all of section 1555-D be repealed.

The Subcommittee declined to recommend that all of section 1555-D be repealed in its entirety because the underlying policy issue is beyond the scope of the Subcommittee's charge. As the Legislature's policy committee with jurisdiction over health and human services matters, we are writing to inform you of the recommendation that section 1555-D be repealed as a result of the U.S. Supreme Court's decision.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exceptions # 18 and # 19 Community Right-to-know Act

**TITLE 22
CHAPTER 271
HEALTH PROGRAMS**

**SUBCHAPTER 2
COMMUNITY HEALTH INVESTIGATION AND INFORMATION**

22 §1696-A. Findings and intent

The Legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to adequately monitor and detect any adverse health effects attributable to them; that individuals are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed actions concerning their employment and their living conditions.

The Legislature further declares that accidental releases of hazardous materials pose a threat to public health and safety and that there are serious questions concerning the State's ability to respond to these emergencies in a coordinated and effective manner; and that local health, fire, police, safety and other government officials require information about the identity, characteristics and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to adequately plan for, and respond to, emergencies and enforce compliance with applicable laws and rules concerning these substances.

The Legislature further declares that the extent of the toxic contamination of the air, water, and land in this State has caused a high degree of concern among its residents; and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The Legislature determines that it is in the public interest for the State to examine its emergency response mechanisms and procedures for accidents involving hazardous materials, to establish a comprehensive program for the disclosure of information about hazardous substances in the community and to provide a procedure whereby residents of this State may gain access to this information.

Public Records Exceptions Subcommittee
Proposed draft language changes

22 §1696-B. Short title

This subchapter may be cited as the "Community Right-to-Know Act."

22 §1696-C. Community health information project

The department shall undertake a community health information project under the auspices of the Environmental Health Program in the Bureau of Health. The project shall respond, subject to this subchapter, to requests made by state agencies, municipalities or individuals for information on potential health hazards posed by the use of hazardous chemicals. To meet these requests, the director shall establish a Community Health Information Clearinghouse which shall contain information on the health implications of chemicals in use in the home and the workplace.

22 §1696-D. Response to requests

When requested under this subchapter, the director shall provide, ~~at a minimum, the identity of information about chemical substances in use or present at a specific location, unless the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.~~ The director may provide information on must include the identity of the chemical substance if it is not a trade secret, the chronic and acute health hazards posed by the substance, potential routes of exposure, emergency procedures and other subjects as appropriate. The director may withhold the identity of the chemical substance if it is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. The director shall report in writing annually by January 1st to the joint standing committee of the Legislature having jurisdiction over human resources on the number and type of requests received and on the director's response to these requests.

In the case of a request for information from a municipality or individual concerning chemicals in use or present at a specific site, the director shall be required to provide information pursuant to this Act only if the specific site is within a 50-mile radius

Public Records Exceptions Subcommittee
Proposed draft language changes

of the municipality or within a 50-mile radius of a residence of the individual requesting the information.

22 §1696-E. Cooperation with state agencies

The director may obtain, upon request, information from and the assistance of the Bureau of Labor Standards, Department of Environmental Protection, Bureau of Pesticides Control and other state agencies as appropriate in the conduct of investigations under this chapter. Information obtained under this section shall be subject to the trade secret provisions governing the agencies supplying the information.

22 §1696-F. Provision of information; trade secrets

~~A person may withhold the identity of a specific toxic or hazardous substance, if the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. All other information about a toxic or hazardous substance, including its identity, routes of exposure, effects of exposure, type and degree of hazard and emergency treatment and response procedures, must be provided if requested by the Director of the Bureau of Health and is considered a public record. The identity of a toxic or hazardous substance that is a trade secret is confidential; all other information provided is a public record. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.~~

SUMMARY

These amendments clarify that all the information provided upon request to the Director of the Bureau of Health about toxic or hazardous substances in use or present at a specific location are public records, with the exception of the identity of substances when the identity is a trade secret. These amendments require the director to release the information that is public upon request.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 37 CME: Missing persons

22 §3034. Missing persons

1. Files; information. The Office of Chief Medical Examiner shall maintain files on missing persons sufficient for the purpose of identification when there is reason to suspect that those persons may not be found alive. These files may include such material as medical and dental records and specimens, details of personal property and physical appearance, samples of hair, fingerprints and specimens that may be useful for identification. The Chief Medical Examiner may require hospitals, physicians, dentists and other medical institutions and practitioners to provide information, samples and specimens. A person participating in good faith in the provision of the information, samples or specimens under this section is immune from any civil or criminal liability for that act or for otherwise cooperating with the Chief Medical Examiner.

2. Confidentiality; disclosure. All Except as provided in subsection 5, all information and materials gathered and retained pursuant to this section must be used solely for the purposes of identification of deceased persons and persons found alive who are unable to identify themselves because of mental or physical impairment. The files and materials are confidential, except that compiled data that does not identify specific individuals may be disclosed to the public. Upon the identification of a deceased person, those records and materials used for the identification may become part of the records of the Office of Chief Medical Examiner and may then be subject to public disclosure as pertinent law provides.

3. Reporting of missing persons. Missing persons may be reported directly to the Office of Chief Medical Examiner by interested parties. Law enforcement agencies or other public agencies that receive reports of missing persons, or that gain knowledge of missing persons, shall report that information to the Office of Chief Medical Examiner. Law enforcement agencies shall report all attempts to locate missing persons to the Office of Chief Medical Examiner. All absences without leave by individuals from state institutions must also be reported to the Office of Chief Medical Examiner when there exists a reasonable possibility of harm to that individual.

4. Cooperation. All state and law enforcement agencies and public and private custodial institutions shall cooperate with the Office of Chief Medical Examiner in reporting, investigating, clearing and gathering further information and materials on missing persons.

Public Records Exceptions Subcommittee

Proposed draft language changes

5. Release to assist in search. The Office of the Chief Medical Examiner may release confidential information and materials about a missing person that is gathered and retained pursuant to this section if the Chief Medical Examiner determines that such release may assist in the search for the missing person.

SUMMARY

This amendment gives the Office of the Chief Medical Examiner the discretion to release confidential information and materials about a missing person if the Chief Medical Examiner determines that releasing the information or materials may assist in the search for that missing person.

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Proposed draft language changes

Exception # 57

Option #1: Sec. 1. 23 MRSA § 63 is amended to read:

§63. Confidential records of right-of-way division confidential

The records and correspondence of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority relating to negotiations for and appraisals of property, pending the final settlement for all claims on the project to which they relate, and the records and data of the department and the Maine Turnpike Authority relating to engineering estimates of costs on projects to be put out to bid are confidential ~~and may not be open for public inspection~~, except that engineering estimates of total project costs are public after the execution of project contracts. The records and correspondence of the right-of-way divisions relating to negotiations for and appraisals of property ~~must be open for~~ are public ~~inspection~~ after 9 months following the completion date of the project according to the record of the department or authority. Records of claims that have been appealed to the Superior Court ~~must be open for~~ are public ~~inspection~~ following the award of the court.

Option #2: Sec. 1. 23 MRSA § 63 is repealed and the following enacted in its place:

§63. Confidentiality of records held by Department of Transportation and Maine Turnpike Authority

1. Confidential records. The following records in the possession of the Department of Transportation and the Maine Turnpike Authority are confidential and may not be disclosed except as provided in this section:

A. Records and correspondence relating to negotiations for and appraisals of property; and

B. Records and data relating to engineering estimates of costs on projects to be put out to bid.

2. Engineering estimates. Engineering estimates of total project costs are public after the execution of project contracts.

3. Records relating to negotiations and appraisals. The records and correspondence relating to negotiations for and appraisals of property are public beginning 9 months after the completion date of the project according to the record of the department or authority, except that records of claims that have been appealed to the Superior Court are public following the award of the court.

Summary

This amendment clarifies that engineering estimates are public after the execution of project contracts.

Public Records Exceptions Subcommittee
Proposed draft language changes

Exception # 62 NNEPRA

Sec. . 23 MRSA §8115 is amended to read:

§8115. Obligations of authority

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. ~~The records and correspondence relating to negotiations, trade secrets received by the authority, estimates of costs on projects to be put out to bid and any documents or records solicited or prepared in connection with employment applications are confidential. The authority is deemed to have a lawyer-client privilege.~~

Sec. . 23 MRSA §8115-A is enacted to read:

§8115-A. Authority records

1. Confidential records. The following records of the authority are confidential:

A. Records and correspondence relating to negotiations of agreements to which the authority is a party or in which the authority has a financial or other interest. Once entered into, an agreement is not confidential;

B. Trade secrets;

C. Estimates of costs of goods or services to be procured by or at the expense of the authority; and

D. Any documents or records solicited or prepared in connection with employment applications, except that applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

Public Records Exceptions Subcommittee
Proposed draft language changes

2. Lawyer-client privilege. The authority may claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

SUMMARY

This amendment revises the confidentiality provisions that apply to the NNEPRA's records to clarify what records are not subject to public access.

This amendment provides that records and correspondence relating to negotiations of agreements are confidential, although the final agreements are not designated confidential by this language.

Trade secrets remain confidential.

This amendment clarifies that estimates of costs of goods or services to be procured by or at the expense of the authority are confidential, and do not become public over time.

This amendment revises the employment application confidentiality to track that of State, county and municipal employee applicants. All documents relating to applicants are confidential except for records pertaining to the applicant who is hired, most of which become public. Personal contact information of public employees is not a public record.

This amendment clarifies the language concerning the lawyer-client privilege; it allows the authority to claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

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Exception #66 Professional competence reports

Sec. 1. 24 MRSA §2505 is amended to read:

§2505. Committee and other reports

Any professional competence committee within this State and any physician licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician in this State if, in the opinion of the committee, physician or other person, the committee or individual has reasonable knowledge of acts of the physician amounting to gross or repeated medical malpractice, habitual drunkenness, addiction to the use of drugs, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.

Except for specific protocols developed by a board pursuant to Title 32, section 1073, 2596-A or 3298, a physician, dentist or committee is not responsible for reporting misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs discovered by the physician, dentist or committee as a result of participation or membership in a professional review committee or with respect to any information acquired concerning misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs, as long as that information is reported to the professional review committee. Nothing in this section may prohibit an impaired physician or dentist from seeking alternative forms of treatment.

The confidentiality of reports made to a board under this section is governed by this chapter.

Sec. 2. 24 MRSA § 2510, sub-§1 is amended to read:

§2510. Confidentiality of information

1. Confidentiality; exceptions. Any reports, information or records received and maintained by the board pursuant to this chapter, including any material received or developed by the board during an investigation shall be confidential, except for information and data that is developed or maintained by the board from reports or records

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Proposed draft language changes

received and maintained pursuant to this chapter or by the board during an investigation and that does not identify or permit identification of any patient or physician; provided that the board may disclose any confidential information only:

- A. In a disciplinary hearing before the board or in any subsequent trial or appeal of a board action or order relating to such disciplinary hearing;
- B. To governmental licensing or disciplinary authorities of any jurisdiction or to any health care providers or health care entities located within or outside this State that are concerned with granting, limiting or denying a physician's privileges, but only if the board includes along with the transfer an indication as to whether or not the information has been substantiated by the board;
- C. As required by section 2509, subsection 5;
- D. Pursuant to an order of a court of competent jurisdiction; ~~or~~
- E. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted; or
- F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

2. Confidentiality of orders in disciplinary proceedings. Orders of the board relating to disciplinary action against a physician, including orders or other actions of the board referring or scheduling matters for hearing, shall not be confidential.

2-A. Confidentiality of letters of guidance or concern. Letters of guidance or concern issued by the board pursuant to Title 10, section 8003, subsection 5, paragraph E, are not confidential.

3. Availability of confidential information. In no event may confidential information received, maintained or developed by the board, or disclosed by the board to others, pursuant to this chapter, or information, data, incident reports or recommendations gathered or made by or on behalf of a health care provider pursuant to this chapter, be available for discovery, court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision or failure to provide health care services. This confidential information includes reports to and information gathered by a professional review committee.

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Proposed draft language changes

4. Penalty. Any person who unlawfully discloses such confidential information possessed by the board shall be guilty of a Class E crime.

5. Physician-patient privilege; proceedings by board. The physician-patient privilege shall, as a matter of law, be deemed to have been waived by the patient and shall not prevail in any investigation or proceeding by the board acting within the scope of its authority, provided that the disclosure of any information pursuant to this subsection shall not be deemed a waiver of such privilege in any other proceeding.

6. Disciplinary action. Disciplinary action by the Board of Licensure in Medicine shall be in accordance with Title 32, chapter 48; disciplinary action by the Board of Osteopathic Licensure shall be in accordance with Title 32, chapter 36.

SUMMARY

This amendment makes 2 changes with regard to the treatment of confidential information held by a medical licensing board.

Title 24, section 2505 allows professional competence committees, physicians and any other person to report a physician to the appropriate licensing board. This amendment clarifies that the confidentiality provisions of the Maine Health Security Act, of which section 2505 is a part, govern the confidentiality of all such reports.

Title 24, section 2510 is amended to authorize medical licensing boards to share confidential information with state and federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

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